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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STEVEN AMES BROWN,

Plaintiff,

v.

ANDREW B. STROUD, an individual
and *dba* STROUD PRODUCTIONS AND
ENTERPRISES, INC.

Defendant.

CIVIL NO. 08-02348 JSW (NC) (DMR)

APPLICATION FOR ORDER
TO SHOW CAUSE RE:
SANCTIONS

AND RELATED CLAIMS

1 Plaintiff Steven Ames Brown hereby applies for an order to show cause against
2 attorney W. Charles Robinson why he should not be sanctioned for violating this Court's
3 order in *Document 559*, the Standards of Professional Conduct set forth in Civil Local Rule
4 11-4(a)(3) and (4) which require attorneys to "(m)aintain respect due to courts of justice and
5 judicial officers" and "(p)ractice with the honesty, care, and decorum required for the fair and
6 efficient administration of justice" and for violating of Business & Professions Code § 6068(d).

7 Previously, this Court admonished Mr. Robinson not to again to represent that he
8 attempted to deliver to the Court his November 20, 2012 letter before March 18, 2013. "Mr.
9 Robinson is admonished that he shall not continue to represent that the Court was informed
10 of the letter dated November 20, 2012 at any time before March 18, 2013. Violations of this
11 order will be sanctioned, payable directly by Mr. Robinson." *Brown v. Stroud, Document 559*,
12 pg.: 3:3-22.

13 Despite that direct order, Mr. Robinson twice substantively repeated the sentence and
14 in response thereto, his *pro hac vice* status was revoked and he was sanctioned \$5,000.00
15 by an order entered as *Methven v. Paradies-Stroud, Document 86*, pg. 1-2. Astonishingly,
16 Mr. Robinson has again filed a brief in this case repeating the same misleading contention.
17 "In addition, counsel for the Stroud Estate sent a letter to the Court on November 20, 2012, in
18 an attempt to advise the Court that no representative had been appointed to represent the
19 Stroud Estate." *Document 590*, pg 7:19-21. A true copy of the brief is annexed hereto as
20 *Exhibit 1*. Mr. Robinson even attached the purported letter as an exhibit. *Exhibit 1*,
21 *Document 590-1*, pg. 4.

22 The brief was addressed to Magistrate Judge Cousins and not only did Mr. Robinson
23 again violate the Court's order concerning the November 20, 2012 letter, but he attempted to
24 mislead Judge Cousins into reversing this Court's rulings concerning service of process on
25 Mrs. Stroud.

26 Previously the Court referred the pending default judgment applications to Judge
27 Cousins for a report and recommendation. Judge Cousins requested further briefing from the
28 Nina Simone estate with a return date of January 15, 2014, allowing the remaining parties the

1 option of filing a responding brief by January 22, 2014. *Document 587*. Although the Court
2 has stricken all the Stroud parties' pleadings and entered their defaults in *Brown v. Stroud*,
3 *Kelly v. Roker* and *Stroud Productions v. Castle Rock*, and revoked Mr. Robinson's *pro hac*
4 *vice* status he filed the brief on their behalf in this and two related actions. *Kelly v. Roker*,
5 *Document 194*, and *Stroud Productions v. Castle Rock, Document 143*.

6 In the brief Mr. Robinson argued that Mrs. Stroud had never been properly served with
7 process and that she was improperly joined as Mr. Stroud's successor pursuant to F.R.Cv.P.
8 25. *Exhibit 1, Document 590*, pg. 12-20. In short, Mr. Robinson reargued the very same
9 points on which this Court had already ruled in *Document 563*. Far more troubling than the
10 fact that it was an improper application for reconsideration was his failure to disclose to Judge
11 Cousins that that it was a reconsideration application at all.

12 Specifically, Mr. Robinson attempted to mislead Judge Cousins into thinking these
13 issues were before him and not already decided by this Court. He literally asked Judge
14 Cousins to reverse this Court's prior order without disclosing the fact that it exists. Mr.
15 Robinson does briefly allude to the substance of his prior motion at *Document 590*, pg. 8:27-
16 9:4. However, all he said about this Court's subsequent order was that it "refused to vacate
17 the Substitution Order". *Exhibit 1, Document 590*, pg. 9:5-8. Three pages later, Mr.
18 Robinson repeated his prior challenge to personal service on Mrs. Stroud but nowhere did he
19 directly inform Judge Cousins that this Court had already ruled on that issue.

20 The issue here isn't whether there were enough clues for Judge Cousins to piece
21 together that the specific challenge had already been ruled upon, but instead that Mr.
22 Robinson clearly attempted to mislead Judge Cousins into thinking he had the service of
23 process issue before him. Moreover, Mr. Robinson's actions evidence yet another instance
24 of contempt for this Court's orders. This Court ruled on that very issue and it's nothing short
25 of contempt for both courts for him to present the same issue to another judge, especially
26 without full and fair disclosure. His conduct is deceitful, disrespectful and disgraceful.
27 Clearly, having his *pro hac vice* status revoked and being sanctioned \$5,000.00 hasn't
28 altered his behavior in the least. Indeed, he hasn't even paid the sanction.

1 Mrs. Stroud's conduct isn't substantially better. She managed to file a declaration in
2 this case on January 22nd. *Exhibit 1, Document 590-3*. However, she completely ignored the
3 order issued in *Methven v. Paradies-Stroud* that she file a response to an OSC by January
4 17th. *Methven v. Paradies-Stroud, Document 86*, pg. 2:14-3:3. She was on actual notice of
5 the requirement because there is a proof of service on her filed as *Methven v. Paradies-*
6 *Stroud, Document 87*.

7 Further judicial action is warranted. The Stroud briefs & declarations should be
8 stricken and appropriate further sanctions imposed on Mr. Robinson.

9 Dated: January 27, 2013

10 Respectfully submitted,

11 /s/

12 STEVEN AMES BROWN,
13 Plaintiff in *pro se*
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Pursuant to Local 3-4(a) (1), please see signature page for list of parties.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVEN AMES BROWN,

Plaintiff,

C 08-02348 JSW

v.

C 09-03796 JSW

ANDREW B. STROUD, et al.,

C 11-05822 JSW

Defendants.

**FURTHER BRIEF ON THE ISSUE OF
JURISDICTION OF DISTRICT COURT**

ANDREW B. STROUD, et al.,

Plaintiffs,

v.

Date: January 22, 2014

CASTLE ROCK ENTERTAINMENT, et al.,

Magistrate: Hon. Nathanael M. Cousins

Defendants.

LISA SIMONE KELLY,

Plaintiff,

v.

WALLY ROKER, et al.,

Defendants.

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ISSUES TO BE DECIDED

The issues to be decided are whether the district court has (1) subject matter jurisdiction and (2) personal jurisdiction of the parties in the cases *Brown v. Stroud* and *Kelly v. Roker* for purposes of preparing a report and recommendation on pending motions for default judgment in these cases.

The order of the Magistrate Judge Nathanael M. Cousins (“Magistrate”) dated December 18, 2013 required further briefing (“FBO”) from the Estate of Nina Simone (“Simone Estate”) in the cases *Brown v. Stroud* and *Kelly v. Roker*. (587, 191) The FBO was issued by the Magistrate after the Court held a hearing at which Defendants and Counterclaimants Andrew B. Stroud (“ABS”) and Stroud Productions and Enterprises, Inc. (“SPE”), Andy Stroud, Inc. (“ASI”) and Scarlett P. Stroud (“SPS”) in her capacity as Executrix of the Estate of ABS (“Stroud Estate”) (“Executrix”) (ABS, SPE, ASI, Stroud Estate and Executrix are collectively referred to as “Stroud”) were not represented and took motions under submission without any argument on behalf of Stroud. Citing *In re Tuli*, 172 F. 3d 707, 712 (9th Cir. 1999) the FBO expressly stated the requirement that the Court has “an affirmative duty to look into its jurisdiction over both the subject matter and the parties.”

RELEVANT FACTS

As noted by the Magistrate in the FBO, Steven Ames Brown (“Brown”) filed a complaint against ABS and SPE in the *Brown v. Stroud* matter asserting causes of action for declaratory relief and common law copyright infringement. ABS and ASI counterclaimed against Brown and the Simone Estate. Brown filed reply counterclaims and the Simone Estate filed counterclaims against ABS, SPE and ASI.

In *Kelly v. Roker*, Lisa Simone Kelly (“Kelly”) filed an action against ABS, ASI, Wally Roker, individually and doing business as ICU Ent. Dist. and Wally Roker Music (collectively, “Roker”) asserting state law claims for conversion, accounting and fraudulent transfer under California State Law and for declaratory relief under 28 U.S.C. § 2201. ASI counterclaimed

1 against Kelly for declaratory relief, copyright infringement, vicarious copyright infringement,
2 contributory copyright infringement, and copyright infringement under California Law.

3 ABS ("Decedent") died testate on the 14th day of July, 2012 and a petition ("Petition")
4 was filed in the Surrogate Court for the State of New York, County of Bronx, File No. 2012-
5 1964 ("Surrogate Ct.") to probate the last will and codicil of the Decedent ("Will").

6 A motion returnable before this court on October 12, 2012 was made by Brown and the
7 Simone Estate to substitute SPS for Decedent ("Substitute Motion") in these actions (459) and an
8 order was granted on October 4, 2012 on the basis that it was unopposed ("Substitute Order")
9 (470).

10 On or about October 31, 2012, an order was issued permitting Methven & Associates
11 ("Methven"), former counsel for ABS and SPE to withdraw and directing ". . . Andy Stroud, Inc.
12 ("ASI") and Stroud Productions and Enterprises, Inc. ("SPE") (wholly owned corporations
13 owned by the Decedent collectively referred to as the "Stroud Corporations") to show cause as to
14 whether they intend to find alternate counsel and, if not, why judgment should not be entered
15 against them on the claims against them and why their affirmative claims should not be
16 dismissed for failure to prosecute." The Withdrawal Order required the Stroud Corporations to
17 respond in writing by no later than November 21, 2012.

18 Methven alleges that it advised the Court that no representative had been appointed to the
19 Stroud Estate. (Exhibit A) In addition, counsel for the Stroud Estate sent a letter to the Court on
20 November 20, 2012 in an attempt to advise the Court that no representative had been appointed
21 to represent the Stroud Estate. (Exhibit A)

22 Letters Testamentary were signed by the Surrogate Ct. November 20, 2012 (and received
23 by W. Charles Robinson on or about November 28, 2012) appointing Scarlett P Stroud as the
24 Executrix of the Estate ("Executrix").

25 A petition to approve the retainer to permit W. Charles Robinson to represent the Stroud
26 Estate was filed with the Surrogate Ct. on or about December 7, 2012 and a decision was
27 rendered by the Surrogate Ct. on or about January 8, 2013 advising that the Executrix had the
28 authority to retain counsel to represent the Stroud Estate in these cases.

1 On January 17, 2013, the court per the Hon. Jefferey S. White issued a Further Order to
2 Show Cause (“FOSC”) dismissing the affirmative claims of Stroud and ordering Stroud to show
3 cause why their answers should not be stricken. (497)

4 A motion to enlarge the time for Stroud to answer, oppose or otherwise respond to the
5 FSOE (“Enlarge Motion”) (503) was filed on February 5, 2013. On February 8, 2013, the court
6 per the Hon. Jefferey S. White denied the Enlarge Motion (503) and issued an order
7 “DISMISS[ING] all affirmative claims by the estate of Andrew Stroud, ASI and SPE and
8 STRIK[ING] any answers that have been filed by these parties and ENTER[ING] DEFAULT
9 against them.” (“Default Order”). (511) The Default Order further directed “The parties who
10 were defending claims by the estate of Andrew Stroud, ASI and SPE in the above captioned
11 matters shall file motions for default judgment by no later than March 15, 2013. (511)

12 On March 8, 2013, a motion to vacate, declaration in support of motion to vacate and
13 memorandum in support of motion to vacate (collectively referred to as “Vacate Motion”) was
14 filed on behalf of Stroud. (517)

15 On March 12, 2013, the court sua sponte denied the Vacate Motion for inter alia,
16 (a) failure to file pro hac vice applications on behalf of SPE and ASI, (b) failure to file the
17 Vacate Motion in all three related cases, (c) the Declaration of W. Charles Robinson did not
18 contain numbered paragraphs and contained legal argument, and (d) failure to comply with Civil
19 LR. 7-9 regarding motions for reconsideration (“Vacate Denial”). (520)

20 On March 15, 2013, opposing counsel filed motions for default judgments and
21 accompanying documents. (522, 523, 524, 529, 529-1, 529-2530, 531, 531-1, 531-2, 531-3)
22 with no hearing date.

23 On March 18, 2013, Stroud filed a motion for leave to file a motion for reconsideration.
24 (536) On March 22, 2013, the court issued an order granting leave to file a motion for
25 reconsideration on the issues of whether Mrs. Stroud was a proper party to be substituted at the
26 time the Court granted the motion. (544)

27 On April 2, 2013, Stroud filed a motion pursuant to Federal Rule of Civil Procedure
28 (FRCP) 60(b) for reconsideration of the Substitute Motion, (459) and upon reconsideration

1 pursuant to FRCP 25 to dismiss the causes of action herein against Stroud on the basis inter alia,
2 that the parties had failed to substitute the proper party and failed to obtain personal jurisdiction
3 of the Stroud Estate (“Reconsideration Motion”). (551) (156) All the other parties in the actions
4 filed a Joint Opposition to the Reconsideration Motion. (556)

5 On May 8, 2013, the court issued the Reconsideration Order (563) finding that “. . .
6 although the Court’s order substituting in SPS was premature. . .” the court nevertheless refused
7 to vacate the Substitution Order and subsequent orders dependent upon it leaving in place the
8 Default Order.

9 ARGUMENT

10 **1. The Court does not have Subject Matter Jurisdiction in Brown v. Stroud** 11 **Pursuant to the Copyright Act.** 12

13 As noted in the FBO, the causes of action asserted by Brown and the Simone Estate in the
14 Complaint and First Amended Complaint in Brown v. Stroud do not support the exercise of
15 subject matter jurisdiction based upon original jurisdiction under 28 U.S.C. § 1331. In support
16 of their claim for subject matter jurisdiction under 28 U.S.C. § 1331, Brown and the Simone
17 Estate rely upon the case of Community for Creative Non-Violence v. Reid, 490 U.S. 730
18 (1989). CCNV v Reid involved a sculpture where the artist and the organization that hired the
19 artist to create the sculpture filed competing certificates of copyright registration. Accordingly,
20 the case involved an interpretation of the “work for hire” provisions of the Copyright Act of
21 1976.

22 In Brown v. Stroud, the basis for the ownership of the property in question is the
23 Separation Agreement of Andrew B. Stroud and Nina Simone dated September 21, 1972
24 (“Separation Agreement”) (Exhibit B) There is no question of “work for hire” or for that matter
25 copyright ownership. The issue of ownership of the property in question is strictly a contract
26 matter between Andrew B. Stroud and Nina Simone. The Separation Agreement provides in
27 pertinent part:

1 “...They are desirous of settling their respective property rights... and for the
2 disposition of all other rights and obligations growing out of or attaching to the
3 marriage relation...”
4

5 The Separation Agreement then sets about addressing the ownership of all creative and
6 intellectual property owned by either of them, to wit:

7 1. Ownership of Certain Master Tapes in Schedule A attached to the Separation
8 Agreement are awarded to Nina Simone with an acknowledgement that Andrew B. Stroud has
9 copies of these tapes to be given to Nina Simone upon payment of a certain sum of money
10 (which was never paid).

11 2. Ownership of all rights in the performances of Master Tapes in Schedule B
12 attached to the Separation Agreement is awarded to Andrew B. Stroud.

13 3. Each party acknowledges that all other items of personal property have been
14 divided between them and neither will make a claim as to any items in the possession of the
15 other party.

16 As the foregoing clearly demonstrates, the ownership of any items in the possession of
17 the Stroud Estate pertaining to Nina Simone is owned by the Stroud Estate and any action
18 contesting such ownership is not a federal question involving copyright. Brown’s claims are all
19 based upon his agreement with Nina Simone and since her claims do not involve copyright,
20 neither does his.

21 Accordingly, there is no basis for original subject matter jurisdiction and indeed no basis
22 for an action in state court in view of the dispositive terms of the Separation Agreement.

23 **2. The Court does not have Subject Matter Jurisdiction in Brown v. Stroud**
24 **Based Upon Diversity.**
25

26 As noted by the Magistrate in the FBO, an American citizen who moves abroad is not a
27 citizen of any state for purposes of 28 U.S.C. § 1332(a)(1) and cannot sue or be sued in federal
28 court on the basis of diversity jurisdiction. Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S.
29 826, 828, 104 L. Ed 2d 893, 109 S Ct 2218 (1989) In order to sue or be sued in federal court on
30 the basis of diversity jurisdiction, a person must be both a citizen of the United States and

1 domiciled in a state in the United States. Newman-Green, Inc. v. Alfonzo-Larrain, 828.
2 Domicile requires both a physical presence at a given location and intent to remain there
3 indefinitely. Lew v. Moss, 797 F. 2d 747 (9th Cir. 1986) In determining intent to remain, the
4 courts consider a variety of factors including current residence, voting registration and voting
5 practices, location of personal and real property, location of brokerage and bank accounts,
6 location of spouse and family, membership in unions and other organizations, place of
7 employment or business, driver's license and automobile registration and payment of taxes and
8 the stated intent of the individual. Lew v. Moss, 750. There is also a presumption in favor of an
9 established domicile as against a newly acquired one. Lew v. Moss, 747. Finally, the person
10 asserting diversity jurisdiction has the burden of proof. Lew v. Moss, 749.

11 Nina Simone made numerous statements that she never intended to return to the United
12 States for the remainder of her life. In a 1999 interview with the show "Hard Talk," at
13 approximately the sixteen minute mark to the eighteen minute mark, she emphatically states that
14 she left the United States due to racism and she will never return.
15 (<http://www.youtube.com/watch?v=t-a7l0Gvabk>) Even more telling are the statements of Nina
16 Simone in her own autobiography entitled "I Put A Spell On You" as outlined in the Declaration
17 of SPS attached as an exhibit.

18 As support for their claims that Nina Simone was domiciled in California, Brown and the
19 Simone Estate offer the declaration of a person who makes statements without offering any proof
20 and whose own self interest is affected by the allegations he makes. When the clearly biased
21 statements of Brown are compared to the words of Nina Simone herself, Brown and the Simone
22 Estate have clearly failed to meet their burden of proving that Nina Simone was domiciled in
23 California.

24 The unbiased facts establish that Nina Simone was not domiciled in California or any
25 other state in the United States. Accordingly, the action cannot be maintained in the federal
26 court on the basis of diversity jurisdiction. Likewise, Brown's action is entirely derived from his
27 contractual relationship with Nina Simone and hence must also be dismissed for lack of diversity
28 jurisdiction.

1 **3. The Court does not have Subject Matter Jurisdiction in Kelly v. Roker.**

2 The facts and legal arguments presented above apply equally to the case of Kelly v.
3 Roker. Subject matter jurisdiction is not present because the causes of action asserted in Kelly v.
4 Roker do not involve any federal question. For the same reasons enunciated in Brown v. Stroud,
5 the Simone Estate lacks subject matter jurisdiction on the basis of diversity.

6 **4. The Court does not have Personal Jurisdiction.**

7
8 Federal Rule of Civil Procedure (FRCP) 25 provides for the substitution of parties in the
9 event of the death of a party which does not extinguish the claim. FRCP 25(a)(1) permits a
10 motion for substitution to be made by any party or the decedent's successor or representative
11 within 90 days after service of a statement noting the death of the party, otherwise the action by
12 or against the party must be dismissed. FRCP 25(a)(3) requires the motion to substitute, together
13 with the notice of hearing, to be served on nonparties as provided in Civil LR. 4.

14 FRCP 4(e) provides for the service of an individual within a judicial district of the United
15 States by

16 (1) following state law for serving a summons in an action brought in courts of general
17 jurisdiction in the state where the district court is located or where service is made; or

18 (2) doing any of the following:

19 (A) Delivering a copy of the summons and of the complaint to the individual
20 personally;

21 (B) leaving a copy of each at the individual's dwelling or usual place of abode
22 with someone of suitable age and discretion who resides there; or

23 (C) delivering a copy of each to an agent authorized by
24 appointment or by law to receive service of process.

25 FRCP 25 provides for the substitution of parties in the event of the death of a party which
26 does not extinguish the claim. FRCP 25(a)(1) permits a motion for substitution to be made by
27 any party or the decedent's successor or representative within 90 days after service of a
28 statement noting the death of the party, otherwise the action by or against the party must be

1 dismissed. FRCP 25(a)(3) requires the motion to substitute, together with the notice of hearing,
2 to be served on nonparties as provided in FRCP. 4.

3 FRCP 4(e) provides for the service of an individual within a judicial district of the United
4 States by

5 (1) following state law for serving a summons in an action brought in courts of general
6 jurisdiction in the state where the district court is located or where service is made; or

7 (2) doing any of the following:

8 (A) Delivering a copy of the summons and of the complaint to the individual
9 personally;

10 (B) leaving a copy of each at the individual's dwelling or usual place of abode
11 with someone of suitable age and discretion who resides there; or

12 (C) delivering a copy of each to an agent authorized by
13 appointment or by law to receive service of process.

14 The Service Declaration (464) alleges that service was accomplished pursuant to Civil
15 Practice Law and Rules (CPLR) § 308.4 of the State of New York. Civil Practice Law and
16 Rules(CPLR) § 308.4¹ provides for the personal service of a summons upon a natural person by

¹ § 308. Personal service upon a natural person. Personal service upon a natural person shall be made by any of the following methods:

1. by delivering the summons within the state to the person to be served; or
2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law; or
3. by delivering the summons within the state to the agent for service of the person to be served as designated under rule 318, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law;
4. where service under paragraphs one and two cannot be made with due diligence, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law;

1 several methods including delivery to the person within the state, delivery to a person of suitable
2 age and discretion at the dwelling place, or service upon an agent where an agent has been
3 designated. When the first two methods cannot be made with “due diligence,” service can be
4 accomplished by “affixing the summons to the door of either the actual place of business,
5 dwelling place or usual place of abode. . . .and by either mailing the summons to such person at
6 his or her last known residence. . .” or what has become known as “nail and mail” service. In
7 order to utilize the provisions of CPLR § 308.4, the process server must demonstrate “due
8 diligence.” Under the laws of New York, the requirement must be strictly construed. Allianz
9 Ins. Co v. Otero, 353 F. Supp. 2d 415 (2004); County of Nassau v. Letosky, 34 A.D. 2d 414,
10 824 N.Y.S. 2d 153 (2 Dept. 2006)

11 In determining what constitutes due diligence, the courts have held that a person
12 attempting to effectuate service of process under the nail and mail provisions must inquire into
13 the employment status of the person to be served to determine if the person can be served at their
14 place of employment. Serraro v. Staropoli, 94 A.D. 3d 1083, 943 N.Y.S. 2d 201 (2 Dept. 2012)
15 (holding that plaintiffs did not exercise requisite “due diligence” where the process server did
16 not make any inquiries about defendants’ work schedules or their respective business addresses);
17 Velocity Investments, LLC v. McCaffrey, 31 Misc. 3d 308, 921 N.Y.S. 2d 799 (2011) (holding
18 that process server must make effort to ascertain if defendant is employed and location of
19 defendant’s place of employment and if defendant is employed, attempt to make service at the
20 place of employment); Faculty Practice Plan of Long Island Jewish Medical Center v.
21 Guarneri, 13 Misc. 3d 302, 822 N.Y.S. 2d 389 (2006) (holding that while due diligence is
22 determined on a case by case basis, regardless of the case-specific circumstances, an inquiry into
23 the defendant’s employment is required before utilizing “nail and mail”)

24 In addition to the foregoing requirement of inquiry into the employment status of the
25 person to be served, due diligence also requires that the process server first try to identify and
26 serve a person of suitable age and discretion at the place of abode or actual place of business.

1 *Allstate Ins. Co. v. Obodyke*, 235 A.D. 2d 533, 652 N.Y.S. 2d 763 (2 Dept. 1997) (holding that
 2 due diligence was not accomplished where process server made no attempt to serve process on a
 3 person of suitable age and discretion); *Galuski v. Tutunjian*, 133 A.D. 2d 480, 519 N.Y.S. 2d
 4 155, *appeal denied* 70 N.Y. 2d 606, 519 N.Y.S. 2d 1029, 513 N.E. 1309 (3 Dept. 1987) (holding
 5 that failure to deliver process to a person of suitable age and discretion at the dwelling place of
 6 the person to be served, where such service could have been made with due diligence, precludes
 7 later use of “affix and mail”); *Rosen v. Weinger*, 116 A.D. 2d 636, 497 N.Y.S. 2d 483 (2 Dept.
 8 1986) (holding that due diligence has not been established so as to authorize nail and mail where
 9 process server has not explained why no attempt was made to serve a person of suitable age and
 10 discretion) In determining who constitutes a person of “suitable age and discretion,” it has been
 11 held that a doorman is a person of suitable age and discretion. *Citadel Management, Inc. v.*
 12 *Telesis Trust, Inc.*, 123 F. Supp. 2d 133 (2000); *Colonial National Bank, U.S.A. v. Jacobs*, 188
 13 Misc. 2d 87, 727 N.Y.S. 2d 237 (2000); *Palandjian v. Pahlavi, D.C. Mass.*, 586 F. Supp. 671
 14 (1984); *Reliance Audio Visual Corp. v. Bronson*, 141 Misc. 2d 671, 534 N.Y.S. 2d 313 (1988)
 15 It has also been held that a security guard is person of suitable age and discretion. *Board of*
 16 *Managers of Le Trianon Condominium v. 1439 Realty Corp.*, 186 A.D. 2d 437, 588 N.Y.S. 2d
 17 565 (1992); *Costine v. St. Vincent’s Hops. & Medical Center of New York*, 173 A.D. 2d 422
 18 570 N.Y.S. 2d 50 (1 Dept. 1991); *Cowan, Liebowitz & Latman, P.C. v. New York Turkey*
 19 *Corp.*, 111 A.D. 2d 93, 489 N.Y.S. 2d 226 (1 Dept. 1985)

20 The Diligence Declaration alleges that the following attempts were made to effect service
 21 by personal delivery:

22 “8/25/2012 7:32AM: No answer at door, no movement inside, no noise inside and no lights.

23 8/27/2012 8:40PM: No answer at door, spoke to doorman, white male, bald, 55 years of age,
 24 5'10" in height, 190lbs, said that defendant has mail being held for a few weeks. Husband passed
 25 away and defendant hasn't been back to apt.

26 8/28/2012 7:20 AM: No answer at door, spoke to superintendant, Chris Dimola, said Scarlett
 27 Stroud's husband passed away and she has not been seen at the building in a few weeks.

1 8/29/2012 9:18AM: Spoke to Chris Dimola (superintendent) M-brw-bk-50-5'7-170 says def is
2 out of the town couple weeks after her husband's death Doorman on premises showed me a
3 bunch of mail that he is holding for defendant” (468)

4 Nowhere in the Diligence Declaration is there any indication that the process server made
5 any inquiry into the employment of Scarlett Stroud. Likewise, the Diligence Declaration is
6 devoid of any attempt to serve a person of suitable age and discretion. While the Diligence
7 Declaration specifically notes discussions with the doorman and superintendent of Mrs. Stroud,
8 no attempt was made to serve these parties. The failure to comply with the due diligence
9 requirements of CPLR § 308.4 precludes the use of this provision for service of process.
10 Accordingly, Mrs. Stroud was not properly served under the provisions of CPLR § 308.4.

11 CPLR § 308.4 requires that service pursuant to its provisions include “. . .affixing the
12 summons to the door of either the actual place of business, dwelling place or usual place of
13 abode within the state of the person to be served. . .” Gray v. Giannikios, 90 A.D. 3d 836,
14 935 N.Y.S. 2d 112 (2 Dept. 2011); O’Connell v. Post, 27 A.D. 3d 630, 811 N.Y.S. 2d 441 (2
15 Dept. 2006) (holding that the due diligence requirement of rule allowing nail and mail service
16 must be strictly observed, given the reduced likelihood that a summons served by nail and mail
17 will be received) Neither the Diligence Declaration (468) nor the Service Declaration (464)
18 establishes that service was accomplished by affixing a copy of the papers to the door of either
19 the actual place of business, dwelling place or usual place of abode within the state of Mrs.
20 Stroud. Accordingly, Mrs. Stroud was not properly served under the provisions of CPLR §
21 308.4.

22 CPLR § 308.4 also requires that service pursuant to its provisions include a mailing of
23 the summons to such person at his or her last known residence or by mailing the summons by
24 first class mail to the person to be served at his or her actual place of business in an
25 envelope bearing the legend "personal and confidential" and not indicating on the outside
26 thereof, by return address or otherwise, that the communication is from an attorney or
27 concerns an action against the person to be served. While page one the Service Declaration
28 (464) filed by Plaintiff/Counterdefendants alleges that “. . .after substituted service was made,” a

1 copy of the Substitute Motion was mailed to Scarlett Stroud at her home address at 5900
2 Arlington Avenue, S-U, Bronx, New York 10471, page three of the Service Declaration (464)
3 indicates that service was accomplished “by other means (specify means of service and
4 authorizing code section:) By personally posting on: 8/31/2012 at 7:37 PM. NY CPLR § 308.4.
5 A declaration of mailing via certified mail is attached.” The two allegations are clearly
6 conflicting and it is impossible to determine from the Service Declaration (464) whether the
7 mailing was by first class mail or by certified mail. CPLR § 308.4 requires that the mailing be
8 made by first class mail and it must be strictly construed. Accordingly, Mrs. Stroud was not
9 properly served under the provisions of CPLR § 308.4.

10 When service is made pursuant to Federal Rule of Civil Procedure authorizing service in
11 accordance with state law, federal courts have no authority to stray from requirements set by
12 state law. New York State Nat. Organization for Women v. Terry, 961 F. 2d 390, certiorari
13 granted, vacated, vacated Pearson v. Planned Parenthood Margaret Sanger Clinic
14 (Manhattan), 113 S. Ct. 1233, 507 U.S. 901, 122 L. Ed. 2d 640, on remand 996 F. 2d 1351,
15 certiorari granted, vacated 114 S. Ct. 2776, 512 U.S. 1249, 129 L. Ed. 2d 888, on remand 41 F.
16 3d 794, C.A. 2 (N.Y.) 1992, see also Swaim v. Moltan Co., 73 F. 3d 711, certiorari denied
17 Gurley v. Swaim, 116 S. Ct. 2499, 517 U.S. 1244, 135 L. Ed. 2d 191, C.A. 7 (Ind.) 1996
18 (holding that where federal court is proceeding pursuant to state law provisions governing
19 service of process, the court is strictly bound by the letter of state law).

20 The federal court does not have jurisdiction over a party unless the party has been
21 properly served. Cranford v. U.S. 359 F. Supp. 2d 981, E.D. Cal. 2005; Hickory Travel
22 Systems, Inc. v. TUI AG, 213 F.R.D. 547, N.D. Cal. 2005; Bonita Packing Co. v. O’Sullivan,
23 165 F.R.D. 610, C.D. Cal 1995.

24 If a party is not properly served, any subsequent proceedings are invalid as to that party.
25 Select Creations, Inc. v. Paliapito Am., Inc., 830 F. Supp. 1223, 1237-1238 (E.D. Wis. 1993);
26 Mooney Aircraft, Inc. v. Donnelly, 402 F. 2d 400, 406 (5th Cir. 1968).

1 The Substitute Motion (459) was not properly served upon Mrs. Stroud. Accordingly, the
2 court did not have personal jurisdiction over her. Any judicial proceedings are invalid as to her
3 and should be vacated.

4 FRCP 25(a) requires the service of a formal written “. . .statement noting the death” of
5 the party on the record followed by the service of the statement on parties and nonparty
6 successors or representatives of the deceased. Barlow v. Ground, 39 F. 3d 231 (9th Cir.1994).
7 Mention of the death of a party in pleadings does not comply with the requirements of Civil LR.
8 25. U.S. v. Currency \$11,331, 482 F. Supp. 2d 873 (E.D. Mich. 2007). Service of the statement
9 on nonparty successors or representatives must be made in accordance with the provisions of
10 Civil LR. 4. Barlow v. Ground, 233; Atkins v. City of Chicago, 547 F. 3d 869 (C.A. 7 (Ill)
11 (2008) (holding that decedents successors, if his estate has been distributed, or personal
12 representative, if it has not been, should certainly be served with statement of death).

13 After satisfaction of the requirements of FRCP 25 regarding the service of the
14 statement noting the death of the party, a motion for substitution may be made within 90 days
15 after service of the statement of death by any party or by the decedent’s successor or
16 representative.

17 The record is devoid of any formal statement of death. While former counsel for the
18 deceased ABS, Methven noted the death of ABS in his Supplemental Declaration in support of
19 his motion to be released as counsel, the mention of the death of a party in pleadings does not
20 comply with the requirements of Civil LR. 25. Moreover, Brown admitted in his Memorandum
21 in Support of Motion to Substitute Scarlett Stroud for Andrew B. Stroud that “. . .no such notice
22 has been served.” (459 at p. 7, line 7).

23 While it has been held that a motion to substitute may be made even though no statement
24 of death has been served and filed, where the motion to substitute has not been served properly,
25 the failure to serve a statement of death takes on added significance. The failure to serve the
26 Substitute Motion (459) properly coupled with the failure to serve a statement of death renders
27 the motion invalid. Accordingly, the court does not have personal jurisdiction over Mrs. Stroud
28 and any judicial proceedings are invalid as to her and should be vacated.

1 FRCP 25(a)(1) provides for the court to order substitution “. . . of the proper party” in the
2 event of the death of a party where the claim is not extinguished. While Civil LR. 25 does not
3 define the term “proper party,” the courts have held that a proper party is the same entity that
4 may make a motion for substitution on behalf of the decedent: namely, the decedent’s successor
5 or representative. *In Re Baycol Products Litigation*, 616 F. 3d 778 (8th Cir. 2010). The
6 question of who is a successor or representative is a substantive issue for which the federal court
7 has to rely upon state law. *In Re Baycol Products Litigation*, 616 F. 3d at 785, 788.

8 Under New York State law, the representative of a deceased party’s estate who can
9 substitute for that party in a civil action is the person who has received letters to administer the
10 estate of the decedent. *Graham v. Henderson*, 224 F.R.D. 59 (N.D.N.Y. 2004). A “successor”
11 under New York State Law has been determined to be (1) a distributee of the estate if the
12 decedent’s estate has been distributed at the time the motion for substitution is made, (2) a
13 person named in a will as the executor of the decedent’s estate, even if the will is not probated or
14 (3) the primary beneficiary of an unprobated intestate estate which need not be probated. *In Re*
15 *Baycol Products Litigation*, 616 F. 3d at 784,5; *See also Kernisant v. City of New York*, 225
16 F.R.D. 422 (E.D.N.Y. 2005) (holding that the proper party for substitution of deceased party is
17 either (1) a successor of the deceased party, such as a distributee of an estate if the estate of the
18 deceased has been distributed at the time of the motion for substitution has been made, or (2) a
19 representative of the deceased party, such as a person lawfully designated by state authority to
20 represent the deceased party’s estate). Where there is no appointed representative, the District
21 court should look at the facts and circumstances of each case and conduct an evidentiary hearing
22 to determine the proper party for substitution. *In Re Baycol Products Litigation*, 616 F. 3d at
23 788.

24 The death of a party whose estate is located in New York divests the court of jurisdiction
25 until a duly appointed representative is substituted for the deceased party. *Brown v. Konczeski*,
26 242 A.D. 2d 847, 662 N.Y.S. 2d 891 (3d Dept 1997). Any judicial proceedings taken prior to the
27 appointment of the representative of the decedent’s estate are unenforceable against the estate.
28 *In re Estate of Einstoss*, 26 N.Y. 2d 181, 309 N.Y.S. 2d 184, 257 N.E. 2d 637 (1970); *See also*

1 *F.A. Mfg. Co. v. Hayden & Clemons*, 273 F. 374 (1st Cir. 1921) (holding that proceeding is
2 merely suspended until the representative of the deceased party becomes a party to the
3 litigation). Before a motion to substitute can be granted, a representative of the estate must be
4 named. *Smith v. Planas*, 151 F.R.D. 547 (S.D.N.Y. 1993) citing *Matter of Estate of Garfinkle*,
5 119 A.D. 911, 500 N.Y.S. 2d 863 (3 Dept. 1986) for the proposition that the estate has no
6 representative until appointed pursuant to the New York Surrogate Court Procedure Act (SCP)
7 §§ 1002(1), 1402(1)(c) and any motion to substitute must be denied until such appointment.

8 The proper party to represent the Estate of the Decedent is Scarlett Stroud. However,
9 under New York State Law, she had no right to represent the Estate until she was formally
10 appointed. While she was the executrix designated in the Will, she had no power or authority to
11 represent the Estate let alone make decisions in complex litigation affecting the assets of the
12 Estate until her formal appointment under New York Law. Notwithstanding that she is a
13 beneficiary under the Will, and arguably the primary beneficiary, her appointment as the
14 executrix is subject to objection by any distributee which in this case includes two sons of the
15 Decedent as well as Lisa Simone Kelly, the daughter of the Decedent and an opposing party in
16 these actions.

17 Under the test enunciated in *In Re Baycol Products Litigation*, 616 F. 3d at 784,5, Mrs.
18 Stroud was not a distributee of an estate where the estate had been distributed at the time the
19 Substitute Motion (459) was made. While she was the executrix named in the Will, this was not
20 a case where the Will was not being probated. Probate proceedings had been timely commenced
21 and were being diligently pursued. Finally, while Mrs. Stroud is a beneficiary of the Estate, and
22 may end up being the primary beneficiary, the Estate is being probated. Accordingly, Mrs.
23 Stroud is not the successor of the decedent and until she was appointed as the Executrix, she was
24 not the representative of the Estate.

25 On the basis of the foregoing, Mrs. Stroud was not a proper party at the time of
26 commencement of the Substitution Motion and the Court did not have personal jurisdiction of
27 her, and all orders, decisions and judicial proceedings taken after the Substitution should be
28 vacated.

CONCLUSION

On the basis of the foregoing, the cases lack subject matter and personal jurisdiction and default judgment should be denied and the cases dismissed.

Dated: January 22, 2014

C. ROBINSON & ASSOCIATES, LLC

BY: _____/s/_____

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1 Tagged Record

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Date Printed: 1/22/2014
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Date 10/24/2012 Time 6:12PM 12:00AM Duration 0.00 (hours) Code Matters-Rel
Subject RE: More on the Stroud cases Staff W Charles Robinson
Client Bruce E. Methven MatterRef IN RE ESTATE OF ANDREW B STRO MatterNo 12-2015
From Bruce E. Methven <bmethven@methvenlaw.com>
To 'Charles Robinson' <wcr@wcrobinsonassociatesllc.com>
CC To 'Scarlett Stroud' <spstroud@earthlink.net>
BCC To
Reminders (days before) Follow Done Notify Hide Trigger Private Status
User1 User3
User2 User4

Hi Charles:

Sanctions orders in federal court can't be appealed until the end of a case. I don't know without doing some research whether the order substituting in Scarlett for Andy is appealable or not. Probably more important, I'm not the attorney for the probate and there's no executrix yet to retain an attorney. I'm happy to help where I can, but I don't think I have the standing to appeal from that order.

Regards,
Bruce

From: Charles Robinson [mailto:wcr@wcrobinsonassociatesllc.com]
Sent: Wednesday, October 24, 2012 9:18 AM
To: 'Bruce E. Methven'
Cc: 'Scarlett Stroud'
Subject: RE: More on the Stroud cases

Bruce,

I'm referring to any and all orders issued after the death of Mr. Stroud. Do you think you should move to vacate these orders in view of the fact that you feel the court had no authority to issue them? How about maybe appealing the orders? What do you think?

Charles

----- Original Message -----

From: Bruce E. Methven <bmethven@methvenlaw.com>
To: 'Charles Robinson' <wcr@wcrobinsonassociatesllc.com>
Sent: 10/23/2012 8:40PM
Subject: RE: More on the Stroud cases

Hi Charles:

I assume you mean the one that says "Mrs. Stroud has not been appointed the representative of the estate and unless and until such time, she has no authority to represent the estate." I do truly understand; you've made the application and the probate court (Surrogate's Court) must approve it.

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Judge White, though, has substituted in Scarlett personally for Andy in the cases here, although it still is not clear to me how he has the authority to do that.

Regards,
Bruce

From: Charles Robinson [mailto:wcr@wcrobinsonassociatesllc.com]
Sent: Tuesday, October 23, 2012 2:08 PM
To: 'Bruce E. Methven'
Cc: 'Scarlett Stroud'
Subject: RE: More on the Stroud cases

Bruce, I suggest you review my previous e-mail.

Charles

----- Original Message -----

From: Bruce E. Methven <bmethven@methvenlaw.com>
To: wcr@wcrobinsonassociatesllc.com
Sent: 10/22/2012 9:17PM
Subject: More on the Stroud cases

Dear Charles:

Judge White's minute order regarding the sanctions is attached. As we've discussed, though, it doesn't tell the whole story. Even though I explained that the court handling the probate has not yet appointed Scarlett as Executrix, Judge White was very unhappy that Scarlett has not retained an attorney who has appeared in the three cases here. He said that unless the sanctions are paid and Scarlett has retained an attorney, then he likely will dismiss all Stroud answers and complaints and award judgments in everything in favor of the Estate, Brown and Sony.

I think it would be wise to do as much as you can to push the court to speed the appointment of Scarlett as Executrix.

Regards,
Bruce

Bruce E. Methven | Methven & Associates | 2232 Sixth Street | Berkeley, CA 94710 | phone: 510-649-4019 | fax: 510-649-4024 | www.methvenlaw.com | bmethven@methvenlaw.com

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November 20, 2012

VIA E-MAIL: JSWpdf@cand.uscourts.gov; jswcrd@cand.uscourts.gov

Hon. Jeffery S. White
United States District Judge
United States District Court
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Judge White:

I am the attorney handling the filing of the petition for the probate of the Estate of Andrew P. Stroud ("Estate"). To Date, no representative has been appointed to the Estate. In the absence of a representative, the Estate can not comply with the order of the court dated October 31, 2011 (sic).

This information is being provided for the benefit of the court.

Sincerely yours,

C. ROBINSON & ASSOCIATES, LLC

W. Charles Robinson

CR

NOTE: DOCUMENT 590-2 OMITTED.

1 Pursuant to Local 3-4(a) (1), please see signature page for list of parties.

2

3

4

5

6

7

UNITED STATES DISTRICT COURT

8

FOR THE NORTHERN DISTRICT OF CALIFORNIA

9

STEVEN AMES BROWN,

10

Plaintiff,

C 08-02348 JSW

11

v.

C 09-03796 JSW

12

ANDREW B. STROUD, et al.,

C 11-05822 JSW

13

Defendants.

14

_____/

**DECLARATION OF SCARLETT P. STROUD
IN SUPPORT OF FURTHER BRIEF ON THE
ISSUE OF JURISDICTION**

15

16

ANDREW B. STROUD, et al.,

17

Plaintiffs,

18

v.

Date: January 22, 2014

19

CASTLE ROCK ENTERTAINMENT, et al.,

Magistrate: Hon. Nathanael M. Cousins

20

Defendants.

21

_____/

22

LISA SIMONE KELLY,

23

Plaintiff,

24

v.

25

WALLY ROKER, et al.,

26

Defendants.

27

_____/

28

29

1
2 I, SCARLETT P. STROUD, declare as follows:

3 I am the widow of the late Andrew B. Stroud ("ABS") and the duly appointed Executrix
4 of the Estate of ABS ("Estate") in the Surrogate Court for the State of New York, County of
5 Bronx, File No. 2012-1964 ("Surrogate Ct.").

6 **HISTORY**

7 1. Andrew B. Stroud ("Decedent") died testate on the 14th day of July, 2012. A
8 petition ("Petition") was filed in the Surrogate Court for the State of New York, County of
9 Bronx, File No. 2012-1964 ("Surrogate Ct.") to probate the last will and codicil of the Decedent,
10 bearing the dates of April 14, 1994, and February 29, 2012, respectively on or about July 31,
11 2012 (collectively referred to as the "Will").

12 2. Defendants Stroud Productions and Enterprises, Inc. ("SPE") and Andy Stroud,
13 Inc. ("ASI") were corporations wholly owned by the Decedent.

14 3. SPE was dissolved on June 24, 1981 and ASI was dissolved on July 26, 2012
15 (Exhibit A).

16 4. I am not an officer, director, managing or general agent, or cashier or assistant
17 cashier or to any other agent authorized by appointment or by law to receive service on behalf
18 of SPE or ASI.

19 5. Nina Simone ("Simone") authored an autobiography entitled "I Put a Spell On
20 You" ("Autobiography") in 1991.

21 6. The Autobiography is replete with references by Simone indicating that she had
22 no intention of ever returning to live in the United States due to the pervasive racism she
23 experienced. The references include the following statements in her Autobiography:

24 "But those weren't my thoughts as I prepared to leave America behind me once and for
25 all." (Autobiography p. 138)

26 "I rushed around sorting out as much as possible until I couldn't stand it any longer and
27 caught the first plane back to Liberia, **back home.**" (Autobiography p. 141) (Emphasis Added)

28 "'I keep the tape in my apartment in Los Angeles, and ...' (Autobiography p. 150)

1 "It was only when we left the USA that we had a chance to try and behave like an
2 average mother and daughter." (Autobiography p. 151)

3 "So I moved to Switzerland with her." (Autobiography p. 153)

4 "...I'd be going back into the dirty, dishonest world I'd left America to escape."
5 (Autobiography p. 158)

6 "I was desperate to get out, to get back home, wherever that was." (Autobiography p.
7 163)

8 "As I started to look around for a home base in Europe Gerrit suggested I buy an
9 apartment in Nijmegen, Holland, close to where he lived." (Autobiography p. 174) (Exhibit B)

10 7. Simone died and was buried in France on April 20, 2003 without ever returning to
11 live in the United States as she had promised she would never do.

12 Pursuant to the laws of the United States, I declare under penalty of perjury the foregoing
13 is true and correct.

14 Dated: January 22, 2014

15 BY: 
16 Scarlett P. Stroud
17

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Exhibit “A”

I PUT A SPELL ON YOU

of my ancestors before slavery, when they were free. Liberia had been founded by freed slaves returning to settle in Africa, and their descendants made up the most prosperous section of Liberian society – people like the Dennis family, the Parkers, the Brights, the Tubmans, and the Tolberts, with the new president among them. Liberia and America were connected through history in a positive way, and Liberian culture and society reflected that. It was a good place to start at for any Afro-American looking to reconcile themselves to their own history.

✓ But those weren't my thoughts as I prepared to leave America behind me once and for all. I was seduced by the Africa in my mind, my mythical home. My Africa had no countries, just hundreds of different peoples mixed through history into a rough cocktail and forced to seed an exiled nation in a far-off country: my great-grandfather, Grandma, Daddy, Momma, me.

Miriam understood my idea of Africa because she was 'Mother Africa', famous and loved throughout the continent and a friend of kings and princes, prime ministers and presidents. She was also smart enough to realize that modern Africa might overpower an innocent Afro-American like me, and so for my first step she chose Liberia, a place where I could relish the differences and yet still feel secure with the similarities.

Lisa and I hardly had anything to pack, so we just upped and went. We – the three of us, including Miriam – arrived in Monrovia on 12 September, Lisa's birthday. There was an official reception for us at the airport – Miriam got this treatment wherever she went in Africa but they knew all about my coming too – and we just had time to change and rest a little before we were driven to the Presidential Palace to be guests of honour at a special party. I met the president, vice-president and all the other cabinet members, shook hands with ambassadors and emissaries and drank champagne all night long. Everyone in Liberia knew who I was, and most of them had at least one or two of my records – I was flattered but not surprised, remembering that Miriam had first heard me on the radio in South Africa all those years ago. Liberians are naturally affectionate, open people, proud of their country, and the fact that a famous black American had decided to come home – which was what they called it – to stay, meant something special to them. It felt as if the whole country had turned out to celebrate my arrival; I was overwhelmed

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ice poured me more champagne – he made me laugh, he was so d he was sure I had never really n't worry, Nina, I'm here to take because these were early days, at before I got round to making

on wasn't going to work he took place called the The Maze. It was ople, but most of Liberian high me I got there I'd drunk a bottle eling just fine. I started dancing, ss and the music got to me all at ng my clothes off while I danced, oting, feeding me champagne. I ed naked for at least two hours, wrote a song about it, 'Liberian ne, so happy to be in town at a laughed and clapped rather than

alone – I was myself again, and r a moment I was scared because . got around town and even the was the woman 'who came from e?'. I thought the president might deport me, a prospect I couldn't day, when I heard the president before hoping to catch a repeat eady, that proved Liberia was my

ad been living in my house on the t was, a little way outside of the ar enough from Monrovia's noise e and quiet whenever I wanted l embassy receptions I mixed with nd at the beach I hung out with nix and I felt I knew everybody. I emory hadn't disappeared – they id tormented me less often. I still

I PUT A SPELL ON YOU

thought of Daddy sometimes, and when I did I became unhappy again, mainly because I didn't know what I thought about him, I was still so confused.

I had arrived in Liberia with no idea of how long I intended to stay; after a few hours I knew it was going to be a long, long time – forever, if everything worked out – and so I had to return to the USA to arrange for money to be sent to me and to pick up some of my things and let people know where I was. I put the trip off again and again but eventually I couldn't wait any longer, so I left Lisa in the care of the president's daughter and flew back to New York. I flinched at every noise, expecting the terrible events that always hit me when I arrived in the country that had disowned me. But this time nothing terrible happened except that I got depressed and longed for Liberia and my house on the beach. America was Daddy, and he got under my skin. I rushed around sorting out as much as possible until I couldn't stand it any longer and caught the first plane back to Liberia, back home.

It seemed like a normal flight, but it was the start of the amazing experience I mentioned when I was describing Daddy's sickness back in Tryon when I was a young girl, all that time ago. I had called Liberia to let them know I was coming, and when I got off the plane in Monrovia one of my best Liberian friends, Millie Buchanan, was waiting in the arrivals lounge. Millie took one look at me and said, 'I've got to take you somewhere right now.' I looked at her like she was crazy and asked her what she was talking about, but she wouldn't say anything more. She just bundled me and my luggage into her car and we drove off. We went to a part of the city I hadn't seen before and stopped outside a little house. Millie took me into the house and made a call, and a little while later an ordinary-looking man came to the door, dressed in a neat, grey suit.

He was a witch doctor. Before I lived in Liberia I thought African witch doctors dressed in bizarre clothes and carried skulls on sticks around with them, but that was just the result of ignorance and western prejudice against African medicine. I knew enough about Africa by now to understand there was nothing weird about tribal medicine or what it could do. But I was still puzzled about why I had been brought to see this man. Millie told me she had known there was something wrong as soon as I got off the plane but she couldn't tell what it was, so she'd called in an expert. The tribal doctor – this ordinary-looking man – took some small bones out of his jacket pocket

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There was a military coup in Liberia in 1980 and Samuel Doe took power. President Tolbert was murdered in the presidential mansion and other people associated with the Government were rounded up and paraded naked through the streets of Monrovia. Then ten of them were taken down to the beach, tied to palm trees and shot. C.C.'s son was one of those ten men. Clarence, the man who first took me to The Maze, was another.

C.C. Dennis died two weeks later, his heart broken. Before he died he burnt his house to the ground so Samuel Doe's men couldn't take it. They say C.C. and Martha Prout were among those people paraded naked through the streets. It could have been me.

Malcolm; Martin; Daddy; C.C.; all the greatest men I have known have died, taken away before I was ready to leave them. I have a videotape of the execution of C.C.'s son, given to me by a Liberian official who escaped after Samuel Doe took over. I keep the tape in my apartment in Los Angeles, and when I'm feeling blue and thinking of C.C. I take it out and watch it again. The horror of it makes my memories of C.C. more real.

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Chapter 10

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I lost C.C. in 1974 but I stayed in Liberia for two more years. It was hard knowing he was around and hearing about him from mutual friends; the hardest part was staying friends with his daughter-in-law Doris Dennis, but I determined not to let him come between us. We walked on the beach one evening as I told her what had happened; we laughed, cried, and then everything was fine between us again.

I might not have had C.C. but I still had Lisa. Through the years I had tried – constantly – to be a mother to her, but our life together had been a series of partings and reunions, partings and reunions, with neither of us knowing how long it would be before we were separated once more. When she was very young Andy and I had taken Lisa on the road, but that stopped as soon as she reached school age. I was glad – touring was no life at all, never mind a normal family life. I wouldn't take a dog on the road through choice, much less my daughter.

So it had been hard for Lisa, sharing me with the music industry, the movement and her father. On tour I missed her endlessly, and when I got home I would go crazy trying to show her how much I loved her, trying somehow to work off my guilt. I would surround Lisa with a suffocating love in my effort to make her forget I'd ever been away. It was only when we left the USA that we had a chance to try and behave like an average mother and daughter. In Barbados and Liberia we were able to live normally and have fun without having to worry about the calendar on the wall.

Lisa was entirely happy in Liberia, at school and at home. Seeing her that way gave me comfort on those days when memories of C.C. crowded back in and I brooded on what I'd lost. In time I moved back into the Liberian high life. Miriam made sure I was kept busy whenever she was in Monrovia, and I started off on another set of

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I PUT A SPELL ON YOU

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Monrovia, a good school, but I wanted her to move to a better one
out in the country. She wouldn't hear of it, and we started having big
fights about it. The more we argued the more conscious I became of
a telephone conversation I'd had with Prime Minister Earl Barrow
when I was in New York. After a while he had started talking about
Lisa and about how difficult it must be for her to see only her mother
or father at any one time, and how strange she must feel moving
around from place to place. He suggested I should put Lisa in a
boarding school for three years; it would give her stability, and I
would be able to plan my own future knowing that Lisa was taken
care of. Deep down I knew he was right, and it seemed to me that if
Lisa was going to get so upset about a local move I might as well get
the unpleasant business over with and put her in a school where she
could settle down properly.

My mind set, I found a school in Switzerland, enrolled Lisa for the
next term and started to organize our move. Earl Barrow had advised
me not to see her while she was at school, in fact to leave her alone
for those three years so that she could learn to be independent; but
the thought of not seeing my daughter for so long was more than I
could bear. Much as I loved Liberia I knew I wouldn't be happy if I
stayed in the knowledge that Lisa was thousands of miles away,
alone, in a cold white country. So I moved to Switzerland with her.

Just as I was ready to leave Liberia I was introduced to an East
African man who had arrived in Liberia via Chicago. His name was
Imojah. He owned a farm in East Africa but had fallen out of favour
with his government so had decided to leave his home country for a
while until things sorted themselves out. He was also a writer, and
spent his exile working on the book that his farm responsibilities had
always stopped him from finishing. Imojah was about six feet six, thin,
dark-skinned, with a voice like bells and large hands. I have never
met anyone like him sexually, before or since. He didn't even have to
touch me sometimes - just being near him was enough. Half an hour
after we had met we were in bed, and it was the most natural and
inevitable thing in the world.

Imojah was like a slap in the face from fate - coming to Liberia when
he did, just after I had made all the arrangements to go to Switzerland
and Lisa had finally been persuaded to go. All of a sudden the
hundred days before we were due to leave started to fly past, and as
the deadline grew closer and closer the thought of leaving Imojah

I PUT A SPELL ON YOU

I knew what they meant: they weren't going to get involved in a dispute between foreigners, especially black foreigners. And they weren't going to take the word of a woman against a man. They left.

I could hardly speak, I was in such pain and so upset. I sent the hotel staff away and lay on the bed crying. I was so alone – there wasn't a single person in the whole country I could call for help. I had no money, I could hardly move, and if I tried to leave the hotel I would be arrested for not paying the bill. My career as a musician was slowly falling to pieces because I had no organization, and I couldn't stay in my own country for more than a couple of weeks before I had to flee like a runaway slave. The men that might have saved me had died or were lost.

I thought of Imojah, who had seemed something definite to hold on to amidst the chaos of the rest of my life. Even he was gone, and now I didn't have the hallucinations to console me. I felt like I'd come to nothing, just another lonely woman stuck in a hotel bedroom in an unfriendly land. I reached over to the table at the side of the bed and took hold of my bottle of sleeping pills. I counted out thirty-five and took them, one by one.

I woke up in hospital with a sore stomach, my neck in a brace and all the papers full of news of my suicide attempt. One of the hotel staff had come back into my room to ask some questions about insurance, found me and called an ambulance. It was now thirty-six hours later. I lay there thinking. I was glad I hadn't died; at least, I thought, I couldn't get any lower than this – it would be uphill from now on.

I spent a couple of weeks recovering on a health farm a little way outside London and as I sat in my room – with a plaster brace around my neck – I thought carefully about what I was, and what I could do to get some control over my life. If I went home I'd be stuck between a rock and a hard place, going out of my mind in Switzerland wishing I'd stayed in Liberia, missing Imojah, knowing at the same time that if I gave in to the slimy charms of promoters begging me to perform – they always said it was because my public was so anxious to see me again, not because they wanted to make a lot of easy money – then I'd be going back into the dirty, dishonest world I'd left America to escape. I also knew Switzerland was no friend to the poor; I had at least some money – less as each day went by – which was why I was made so welcome: there was no other reason. But I wasn't getting what was mine by right from the States, and Switzerland wasn't

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oice and he mispronounced h.' He said, 'You're name is n the south. Well, I am, too, e in jail now, you're not in .' I was terrified. My lawyer amed for Andy but he was y the guy let me out, just as was going on. Andy came in men's room all that time. I e guy started to take my ng to arrest me on further : want to be there if they did we first went into that room shed as soon as the trouble gone.

e. It seemed to me that Andy villing to exercise the control of touring, every little thing. nan I didn't know to pay me money with me himself. That ight have been a little naive e, but, naive or not, it was a ce.

were no major disasters, but s in Europe. The difference rom the tax charges - which e general unease I felt about witzerland and Cannes my reason for accepting the tour ection of a proper manager gether. As the Carnegie Hall a big mistake in coming to artland found me guilty as / said he would take care of. JSA would take another ten

idgement was partly respon- n America again, with Andy, n't ready to face. At last I

I PUT A SPELL ON YOU

couldn't stand it any longer and caught a cab to the airport. I was desperate to get out, to get back home, wherever that was. Carnegie Hall and the Newport Jazz Festival would have to wait a little longer before they saw me again. My greatest regret was letting down George Wein - the promoter - who had been a faithful supporter of mine over the years.

When I fled from New York he had to cancel the shows at very short notice and refund all the ticket money - the shows had sold out - and I would have understood if he'd been furious. He wasn't, he was very kind, and he issued a press release saying he regretted my actions but understood the pressure I was under. It was a very generous thing for George to say, and I've never forgotten it.

I arrived back in Europe knowing I couldn't go back to America until I felt totally prepared, and that if I lived much longer in Switzerland I would go insane. I played a few jazz festivals in the summer but I was just drifting, trying to find something to hold on to amidst all the uncertainty. I had started up my musical career almost by accident, simply because I happened to be living in countries where people wanted to see me perform, and it was totally the wrong way to go about doing things - agreeing to perform first and thinking about getting the right staff together second. I hadn't really got out of my African frame of mind and I'm sure the Swiss and everyone else thought I was crazy. My mind was full of memories of Imojah, C.C. and Daddy. C.C. especially, as I realized the security I had thrown away by losing him.

I played the Festival Hall in London and immediately afterwards was asked to tour Israel. I felt it was exactly what I needed - to go to the Holy Land, get in touch with myself and with God, and think things through. Best of all, the tour was arranged so I could be in Bethlehem on Christmas Day. I called Momma to tell her, and for once she was pleased to hear my plans. I flew to Tel Aviv with Max Cohen - my lawyer for all those years - and his wife. I fell asleep on the El Al plane after we took off and when I woke up there was a line of people standing in the aisle, queueing up. I thought they were waiting to use the bathroom or something, but they were all standing looking at me, waiting for me to wake up so they could hug and kiss me and welcome me to their country. They said they had been waiting for me to come for over ten years. The newspapers were full of the news of my arrival, and when I got off the plane the Mayor of Tel Aviv was

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being on the road with me for a while Raymond did, too, that the people would come.

Raymond and I established a regular series of concerts throughout Europe and my mind turned away from the road back to my domestic life. I had an apartment in Hollywood, but that wasn't too much use when I had a week to burn in between dates in Europe. For the time being I'd had enough of Paris and what I needed was a quiet place to come home to where I could relax, and which would contrast with the hectic high-powered atmosphere of luxury hotels in capital cities.

Once, in the mid-sixties, I gave a concert in Central Park, New York. The movement was at its height at that time and both my performance and the audience that day was fiercely political. The crowds pressed close to the front of the stage and Andy, standing behind me in the wings, got worried that the stage would be crushed under the audience's collective weight and me along with it. He started to move me off the stage, helped by a young Dutch photographer, Gerrit De Bruin. From the audience's point of view it looked like my performance was being stopped by some unknown white man. They didn't understand what was really going on and pressed forward angrily. The stage started to buckle and we just made it to the Mercedes before the crowds surged in around us. Andy pushed Gerrit on to the floor of the car so they couldn't see him and we slowly pushed our way through the masses, holding our breath and hoping he wouldn't be noticed.

It was a terrifying experience and Gerrit and I became firm friends from that moment on. As time passed I came to rely on him more and more. Soon after Andy and I had split up, I was stuck in Europe feeling down. Gerrit saw my mood, packed me and my suitcases into his little car, and we set off on a driving tour, staying in small hotels without calling up to make reservations, eating in tiny restaurants in alpine villages. Every so often people would think they recognized me but then dismiss the notion because they thought there was no way Nina Simone would be seen in the sort of places we were in. Gerrit and I had a wonderful time, and coming when it did it saved my skin. As I started to look around for a home base in Europe Gerrit suggested I buy an apartment in Nijmegen, Holland, close to where he lived. I liked the idea and Gerrit helped me to move in and took care of all the hundreds of problems that turn up when you move to a new country. He came on the road with me as well, sorting out problems

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